

ACT No. 987

Regular Session, 2010

HOUSE BILL NO. 1189

BY REPRESENTATIVE WADDELL AND SENATOR WALSWORTH

AN ACT

To amend and reenact R.S. 32:781(7) and (13)(a)(i), 783(F)(3) and (6) and (G), 784(A)(4), 791(A)(1), (B)(1) and (4)(a), (G)(1), and (J), 792(A)(introductory paragraph) and (B)(introductory paragraph), and 802(D), (F), and (G) and to enact R.S. 32:781(17) and (18), 784(A)(5), (D) and (E), and 794, relative to the Louisiana Used Motor Vehicle Commission; to define "used motor vehicle dealer"; to define "public or retail motor vehicle auction"; to define "wholesale motor vehicle auction"; to provide for the sale of a used motor vehicle "as is"; to provide for the commission's power to hold hearings; to establish a license for rental motor vehicle dealers; to authorize off-premises permits; to provide for the Louisiana Used Motor Vehicle Commission Fund; to provide for application procedures; to provide for expiration of licenses; to provide for a bond requirement; to provide for education requirements; to repeal expired provisions; to provide for denial of a license; to authorize revocation or suspension of a license, issuance of a civil fine or penalty, or injunction for certain acts; to provide for wholesale motor vehicle auction violations; to provide for suspension, revocation, or refusal of a license or permit for committing an unlawful action during a wholesale motor vehicle auction; to authorize an injunction or civil fines and penalties for committing an unlawful action during a wholesale motor vehicle auction; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 32:781(7) and (13)(a)(i), 783(F)(3) and (6) and (G), 784(A)(4), 791(A)(1), (B)(1) and (4)(a), (G)(1), and (J), 792(A)(introductory paragraph) and (B)(introductory paragraph), and 802(D), (F), and (G) are hereby amended and reenacted and

1 R.S. 32:781(17) and (18), 784(A)(5), (D) and (E), and 794 are hereby enacted to read as
2 follows:

3 §781. Definitions

4 As used in this Chapter:

5 * * *

6 (7) "Place of business" means the place owned or leased and regularly
7 occupied by a person, ~~firm, or partnership~~, corporation, limited liability company,
8 or other entity licensed under the provisions of this Chapter for the principal purpose
9 of selling used motor vehicles, crushing, or compacting used motor vehicles and
10 selling the crushed or compacted vehicle for scrap, or engaging in the business of a
11 dismantler and parts recycler, where the products for sale are displayed and offered
12 for sale, and where the books and records required for the conduct of the business are
13 maintained and kept.

14 * * *

15 (13)(a)(i) "Used motor vehicle dealer" means any person, ~~partnership,~~
16 ~~corporation, limited liability company, or other entity~~ who, for a commission or with
17 intent to make a profit or gain of money or other thing of value, buys, sells, brokers,
18 exchanges, rents with option to purchase, auctions, offers, or attempts to negotiate
19 a sale or exchange of an interest in used motor vehicles and who is engaged wholly
20 or in part in the business of buying and selling used motor vehicles, whether such
21 motor vehicles are owned by such person and whether the motor vehicles are sold
22 from a dealership location or via any form of advertising, including but not limited
23 to the Internet. A person shall be presumed to be engaged in the business of selling
24 used motor vehicles if he sells five or more used motor vehicles in any twelve-month
25 period which vehicles are not registered to and insured by members of the
26 individual's household, immediate family members, or legal entities which the
27 individual has an ownership interest in or is employed by. An entity shall be
28 presumed to be engaged in the business of selling used motor vehicles if the entity

1 sells five or more used motor vehicles which are not registered to and insured by the
2 entity or by an entity affiliated with the entity receiving anything of value.

3 * * *

4 (17) "Public or retail motor vehicle auction" means the act of any person,
5 partnership, corporation, limited liability company, or other entity engaging in, for
6 a commission, compensation, or other consideration, the business of providing
7 vehicle auction services at an established place of business which is not open
8 exclusively to motor vehicle dealers, dismantlers, and parts recyclers.

9 (18) "Wholesale motor vehicle auction" means the act of any person,
10 partnership, corporation, limited liability company, or other entity engaging in, for
11 a commission, compensation, or other consideration, the business of providing
12 wholesale vehicle auction services at an established place of business which is open
13 exclusively to licensed motor vehicle dealers, dismantlers, and parts recyclers.

14 * * *

15 §783. Used Motor Vehicle Commission; appointment and qualification; terms of
16 office; powers and duties

17 * * *

18 F. The commission's powers and duties shall include but are not limited to
19 the following:

20 * * *

21 (3) Requiring all dealer sales to have a condition of sale, such as warranty
22 disclaimer, implied or written warranty, or a service contract ~~approved by the~~
23 commission. If a sale of a used motor vehicle is "as-is" and with a waiver of all
24 warranties, the bill of sale shall include a notice which clearly and unambiguously
25 states that the terms of the sale are "as-is" and with a waiver of all warranties,
26 including any claim for redhibition or reduction of or return of the purchase price.
27 The customer shall acknowledge the terms of the sale. An acknowledgment of the
28 terms of the sale via acceptance of an electronic notice at any time prior to or as part
29 of the transaction shall constitute compliance with this Section. If a used motor
30 vehicle dealer complies with the provisions of the Section, the purchaser shall not

1 be entitled to a return of the purchase price, a reduction in the purchase price, or a
2 repair of the vehicle without payment of the cost of the repair.

3 * * *

4 (6) Holding and conducting hearings on violations of this Chapter, ~~areas of~~
5 ~~responsibility disputes~~, mandatory repurchase disputes, imposing civil penalties,
6 cease and desist orders, and revocation or suspension of licenses.

7 * * *

8 G. All fees and charges under the provisions of this Chapter shall be
9 collected and received by the executive director of the commission and deposited by
10 him in a special fund ~~with the state treasury~~ to be known as the Louisiana Used
11 Motor Vehicle ~~and Parts~~ Commission Fund. The proceeds of the fund shall be
12 disbursed by him at the direction of the commission in administering and enforcing
13 the provisions of this Chapter.

14 * * *

15 §784. Dealers, ~~manufacturers, dismantlers, and distributors~~ auctions to be licensed;
16 exception

17 A. No person, firm, or corporation, unless licensed to do so by the
18 commission under the provisions of this Chapter, shall carry on or conduct the
19 business of:

20 * * *

21 (4) ~~Used~~ Public or retail motor vehicle auctions, ~~wholesale motor vehicle~~
22 auctions, or and salvage pools that deal in used motor vehicles.

23 (5) Rental dealer as defined in R.S. 32:793(A)(5).

24 * * *

25 D. No person, partnership, corporation, limited liability company, or other
26 entity licensed by the Louisiana Used Motor Vehicle Commission shall display any
27 used motor vehicle at any place other than at a facility licensed by the commission,
28 unless an off-premises permit authorizing the display of such used motor vehicle at
29 the location has been issued by the commission. The commission may issue one off-
30 premises permit to a dealer in any ninety-day period in accordance with rules and

1 regulations authorizing the display of up to five vehicles at an event within thirty-
2 five miles of the dealer's place of business for a period of up to three days.

3 * * *

4 E. A public or retail motor vehicle auction shall not be required to obtain an
5 off-premises permit to auction. via an Internet site. a used motor vehicle for a third
6 party which is in the possession of the third party.

7 §791. Application for license; fee; educational seminar; bond requirements; liability
8 insurance; salesperson's license; location of business

9 A.(1) It shall be unlawful and shall constitute a misdemeanor for any person,
10 firm, association, corporation, limited liability company, or trust to engage in
11 business as, or serve in the capacity of, or act as a used motor vehicle dealer, rental
12 dealer. or used motor vehicle salesperson in this state without first obtaining a
13 license therefor as provided in this Section.

14 * * *

15 ~~B.(1) Applications for licenses required under the provisions of this Section~~
16 licensure as a used motor vehicle dealer shall be ~~verified~~ signed by the ~~oath or~~
17 ~~affirmation of the~~ applicant, shall be on forms prescribed by the commission and
18 furnished to such applicants, and shall contain such information as the commission
19 deems necessary to enable it to fully determine the qualifications and eligibility of
20 the several applicants to receive the license or licenses.

21 * * *

22 ~~(4)(a) All bonds and licenses issued under the provisions of this Part shall~~
23 ~~expire on December thirty-first following the date of issue~~ be for the license period
24 and shall be nontransferable.

25 * * *

26 ~~G.(1) Every person, firm, or corporation before being licensed hereunder~~
27 applicant for licensure or renewal of a license as a used motor vehicle dealer shall
28 show proof of responsibility by depositing with the commission a continuing bond
29 in the amount required herein:

1 ~~(a) of twenty~~ Twenty thousand dollars if the applicant sold less than one
2 hundred and twenty vehicles during the twelve month period preceding the licensure
3 period.

4 ~~(b) Thirty-five thousand dollars if the applicant sold one hundred and twenty~~
5 or more vehicles during the twelve month period preceding the licensure period.

6 ~~(c) All bonds shall be with a commercial surety thereon of a company~~
7 authorized to do business in the state, which bond shall be approved by the
8 commission, payable to the state of Louisiana through the commission, and shall be
9 conditioned upon faithful observance of all laws regulated by the commission,
10 including but not limited to laws relating to penalties and hearing costs and to the
11 proper disposition of licenses, tags, or titles, and shall also indemnify any person
12 who suffers any loss by reason of a failure to observe the provisions of the law
13 relating to sales tax, licenses, tags, or titles and shall also indemnify any person who
14 suffers any loss, damages, and expenses by reason of a failure to deliver title and for
15 the proper disposition of all taxes, licenses, and registration fees.

16 * * *

17 ~~J.(1) Any new applicants~~ Applicants for a license issued licensure pursuant
18 to this Part, other than a used motor vehicle dealer's license, ~~who have not been~~
19 ~~previously licensed prior to January 1, 2004,~~ shall submit such evidence as the
20 commission shall prescribe, documenting that either the applicant or his general
21 manager, office manager, title clerk, or other responsible representative of the
22 applicant has attended a four-hour educational seminar or has registered to attend
23 such seminar within sixty days after issuance of the license.

24 ~~(2) Every person licensed pursuant to this Part prior to January 1, 2004, shall~~
25 ~~submit such evidence as the commission shall prescribe, documenting that either the~~
26 ~~person licensed or his general manager, office manager, title clerk, or other~~
27 ~~responsible representative of the person licensed has attended a four-hour~~
28 ~~educational seminar prior to August 15, 2004.~~

§792. Denial, revocation, or suspension of license; grounds; unauthorized acts

A. Except as otherwise provided in this Section, the commission may deny an application for a license as a used motor vehicle dealer, dealer in used parts or used accessories of motor vehicles, used motor vehicle auctioneer, or salesperson for any of the following reasons:

* * *

B. The commission may revoke or suspend a license, issue a fine or penalty, or enjoin a used motor vehicle dealer, dealer in used parts or used accessories of motor vehicles, used motor vehicle auctioneer, or salesperson for any of the following conduct:

* * *

§794. Wholesale motor vehicle auctions; unlawful acts

A. It shall be unlawful and constitute a violation of this Chapter for any wholesale motor vehicle auction to:

(1) Fail to comply with the licensing requirements of this Chapter.

(2) Fail to comply with any provision of this Chapter, any provision relating to the proper disposition of license tags or registrations, transfers of title, or payment of sales taxes in connection with the purchase or sale of any new or used motor vehicle, or with any rule or regulation adopted and promulgated by the commission pursuant to the authority vested in it by this Chapter.

(3) Permit any person other than a licensed dealer or a salesperson who holds a current authorization to bid for a licensed dealer, to bid, offer to bid, participate in the bid process, purchase, or offer to purchase a used motor vehicle placed up for bid at the auction.

(4) Accept cash for a sale from anyone other than a licensed dealer or his agent.

(5) Permit any person other than a mechanic or technical expert to accompany a licensed dealer to inspect used motor vehicles prior to the vehicle being placed up for bid at the auction.

1 (6) Fail to disclose that a sale took place off the block or out of the auction
2 ring by providing red-stamped verification on the auction bill of sale or invoice, with
3 the lettering on the stamp to be no less than half-inch print size.

4 (7) Fail to implement, within six months, following the effective date of this
5 Section, an audio video recording system which will properly verify sales occurring
6 in the lanes at the auction and fail to maintain those video recordings for at least
7 thirty days following the sale.

8 (8) Fail to use an industry-recognized damage classification system for all
9 vehicles sold at auction.

10 (9) Engage in fraudulent activity in the auction process.

11 B. Any violation of this Section shall constitute grounds for suspension,
12 revocation, or refusal to issue or renew any license or permit issued by the
13 commission.

14 C. Any licensee who violates any of the provisions of this Section may be
15 subject to an injunction under R.S. 32:786 and fines and penalties provided in R.S.
16 32:788.

17 * * *

18 §802. License required; application; fee; duration

19 * * *

20 D.~~(1)~~ In addition to the items required to be submitted by applicants for
21 licensure pursuant to ~~Subsection C~~ of this Section, such applicants who have not
22 been licensed prior to January 1, 2004, shall also submit such evidence as the
23 commission shall prescribe, documenting that either the applicant or his general
24 manager, office manager, title clerk, or other responsible representative of the
25 applicant has attended a four-hour educational seminar or has registered to attend
26 such seminar within sixty days after issuance of the license.

27 ~~(2) Every person licensed pursuant to Subsection C of this Section prior to~~
28 ~~January 1, 2004, shall submit such evidence as the commission shall prescribe;~~
29 ~~documenting that either the person licensed or his general manager, office manager,~~

1 ~~title clerk, or other responsible representative of the person licensed has attended a~~
2 ~~four-hour educational seminar prior to August 15, 2004.~~

3 * * *

4 F. All ~~bonds and~~ licenses issued under the provisions of this Part shall expire
5 on ~~December thirty-first of each year~~ the date indicated on the license and shall be
6 nontransferable.

7 G. All applications for renewal of licenses hereunder shall be submitted on
8 or before sixty days prior to ~~December thirty-first of each year~~ the expiration date
9 indicated on the license. If application has not been made for renewal of licenses,
10 such licenses shall expire on ~~December thirty-first of the following year~~ the
11 expiration date indicated on the license, and it shall be a violation of this Part for any
12 person to represent himself and act thereafter in the capacity and business for which
13 he was formerly licensed hereunder.

14 * * *

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____